The Honorable Richard Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILLIAM F. WINGATE, Plaintiff, vs. CITY OF SEATTLE, SEATTLE POLICE DEPARTMENT AND CYNTHIA WHITLACH, in her official and individual capacities, Defendants.	No. 2:15-cv-00822-RAJ **THE CITY DEFENDANTS' ANSWER TO THE AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES** JURY DEMAND

COME NOW City of Seattle and Seattle Police Department (collectively "the City Defendants"), by and through their attorneys of record, Peter S. Holmes, Seattle City Attorney, and Christine Olson, Assistant City Attorney, and hereby submit their Answer and Affirmative Defenses to Plaintiff's Amended Complaint, and allege as follows:

I. PARTIES

1.1 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, deny the same at this time.

1.2 The City Defendants admit that the City of Seattle is a municipal corporation in the State of Washington. The City Defendants admit that the Seattle Police Department is part of the City of Seattle. The City Defendants deny any remaining allegations in this paragraph.

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1.3 The City Defendants admit that Officer Cynthia Whitlatch was, at all relevant times, a Seattle Police Department officer. Except as admitted, denied.

1.4 The City Defendants admit the allegations in this paragraph.

II. JURSIDICTION AND VENUE

2.1 The City Defendants admit that this case has been removed to the U.S. District Court for the Western District of Washington, which has subject matter jurisdiction over plaintiff's sole federal cause of action under 42 U.S.C. § 1983 for an alleged violation of plaintiff's Fourteenth Amendment rights, and further admits that the Court may elect to assert supplemental jurisdiction over plaintiff's separate state law claims. The City Defendants further admit that venue is proper. Except as admitted, the City Defendants deny the allegations in this paragraph.

III. BACKGROUND FACTS

3.1 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same.

3.2 The City Defendants admit the allegations of this paragraph.

3.3 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same.

3.4 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same.

3.5 The City Defendants admit that on the date of Mr. Wingate's arrest, Officer Whitlatch was on duty as a City of Seattle Police Officer and was driving a Seattle Police Department patrol car. Except as admitted, denied.

3.6 The City Defendants admit the allegations in this paragraph, except for the allegation that Mr. Wingate was using a golf club as a cane. With regard to that allegation, the City Defendants

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lack sufficient knowledge to form a belief as to its truth or falsity, and, accordingly, at this time deny the same.

3.7 The City Defendants admit that at some point, Officer Whitlatch turned on the patrol car dashboard camera. The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in this paragraph and, accordingly, at this time deny the same.

3.8 The City Defendants admit the allegations contained in the first sentence of this paragraph. The City Defendants lack sufficient knowledge as to form a belief as to the truth or falsity of the remaining allegations contained in this paragraph and, accordingly, at this time deny the same.

3.9 The City Defendants admit that Mr. Wingate was standing on the northwest corner of 12th Avenue and East Pike Street, and that he was holding a golf club in one hand and something else in the other hand. The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in this paragraph and, accordingly, at this time deny the same.

3.10 The City Defendants admit that Officer Whitlatch parked her patrol car near where Mr. Wingate was standing. The City Defendants lack sufficient knowledge as to form a belief as to the truth or falsity of the remaining allegations contained in this paragraph and, accordingly, at this time deny the same.

3.11 The City Defendants admit the allegations contained in this paragraph.

3.12 The City Defendants admit that Officer Whitlatch gave multiple commands using varying tones for Mr. Wingate to put the golf club down. The City Defendants deny any remaining allegations or characterizations at this time.

3.13 The City Defendants admit that, at some point, Mr. Wingate said something to the

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effect that the golf club was his. The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in this paragraph and, accordingly, at this time deny the same.

3.14 The City Defendants admit that Officer Whitlatch gave Mr. Wingate multiple commands to put the golf club down, and that at some point referred to the golf club as a "weapon." The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations and characterizations contained in this paragraph and, accordingly, at this time deny the same.

3.15 The City Defendants admit that Officer Whitlatch told Mr. Wingate that he was being audio and video recorded. The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations and characterizations contained in this paragraph and, accordingly, at this time deny the same.

3.16 The City Defendants admit that Officer Whitlatch repeatedly told Mr. Wingate to put his golf club down, that Mr. Wingate told her to call somebody, and that Officer Whitlatch told him that she was calling someone. The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in this paragraph and, accordingly, at this time deny the same.

3.17 The City Defendants admit that, at some point, Officer Whitlatch walked around the front of her patrol car in the direction of where Mr. Wingate had been previously standing. The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in this paragraph and, accordingly, at this time deny the same.

3.18 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same.

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3.19 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same.

3.20 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same.

3.21 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same.

3.22 The City Defendants admit that Sergeant Lam conducted the arrest screening for plaintiff. The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in this paragraph and, accordingly, at this time deny the same.

3.23 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same.

3.24 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same.

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3.30 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same.

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3.37 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same.

3.38 The allegations stated in this paragraph are conclusions of law, not averments of fact warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

3.39 The allegations stated in this paragraph are conclusions of law, not averments of fact warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

3.40 The allegations stated in this paragraph are conclusions of law, not averments of fact

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warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

3.41 The allegations stated in this paragraph are conclusions of law, not averments of fact warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

3.42 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same.

3.43 The City Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations contained in this paragraph and, accordingly, at this time deny the same. The allegations stated in this paragraph are also conclusions of law, not averments of fact warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

3.44 The City Defendants admit the allegations contained in this paragraph.

IV. CAUSES OF ACTION

4.1 The City Defendants re-allege and incorporate all proceeding paragraphs.

4.2 The allegations stated in this paragraph are conclusions of law, not averments of fact warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

4.3 The allegations stated in this paragraph are conclusions of law, not averments of fact warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

4.4 The allegations stated in this paragraph are conclusions of law, not averments of fact warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

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4.5 The allegations stated in this paragraph are conclusions of law, not averments of fact warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

4.6 The allegations stated in this paragraph are conclusions of law, not averments of fact warranting a response. To the degree any response is warranted, the City Defendants deny the same at this time.

V. RELIEF REQUESTED

5.1 The City Defendants re-allege and incorporate all proceeding paragraphs.

5.2(a)-(h) The City Defendants deny that plaintiff is entitled to any of the relief sought in these sections.

THE CITY DEFENDANTS' AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim against the City Defendants upon which relief may be granted.

2. The City, a municipal corporation, is immune from liability for prejudgment interest on tort judgments and is immune from punitive damages.

3. The Seattle Police Department is not a suable entity.

4. The City Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of Washington or any political subdivision thereof.

5. At all times relevant to the acts alleged in the Amended Complaint, the duties and functions of the City Defendants' officials entailed the reasonable exercise of proper and lawful discretion.

6. Any injury alleged to have been sustained was not the proximate result of any act or

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failure to act of the City Defendants.

7. Plaintiff has a duty to mitigate his damages. To the extent plaintiff has failed to mitigated his damages, any recovery must be reduced.

8. The City Defendants reserve the right to assert additional affirmative defenses as may be warranted by further discovery.

JURY TRIAL DEMAND

The City Defendants respectfully demand a trial by jury of all issues so triable.

WHEREFORE, the City Defendants respectfully request that Plaintiff's Amended Complaint be dismissed with prejudice, that they be awarded costs and reasonable attorneys' fees herein, and that they be granted such other and further relief as the Court finds just and equitable.

DATED this 1st day of June, 2015.

PETER S. HOLMES
Seattle City Attorney

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Attorney for the City Defendants

CERTIFICATE OF SERVICE

I certify that on the 1st day of June, 2015, I electronically filed this document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

Attorneys for Plaintiff:

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Attorneys for the City Defendants:

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DATED this 1st day of June, 2015, at Seattle, King County, Washington.

/*s/Autumn Derrow*
Autumn Derrow, Legal Assistant

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